



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/154929

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on March 13, 2014, at Kenosha, Wisconsin.

The issues for determination are whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. In February, 2009, EC and the Petitioner came to the agency and applied for and received FoodShare, BadgerCare and child care benefits. They reported their address as [REDACTED], [REDACTED].

3. In October, 2009, the agency was unable to verify residence or mailing address for the Petitioner and EC.
4. On November 16, 2009, the agency issued a Notice of FS Overissuance to the Petitioner at [REDACTED], [REDACTED], informing him that the agency intends to recover an overissuance of FS benefits in the amount of \$1,784 for the period of February 22, 2009 – October 31, 2009. It further informed him of the right to file an appeal within 90 days of the date of the notice.
5. On December 2, 2009 and January 5, 2010, the agency issued dunning notices to the Petitioner at [REDACTED], [REDACTED].
6. On March 12, 2010, the agency issued a notice of tax intercept to the Petitioner at [REDACTED], [REDACTED]. The notice advised the Petitioner of the right to file an appeal of the action by requesting a hearing within 30 days of the date of the notice.
7. The agency has recouped \$1,132 of the \$1,784 overpayment from the Petitioner since May, 2013.
8. On January 21, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the agency concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). The Petitioner's appeal was filed more than 4 years after the overpayment notice and almost 4 years after the tax intercept notice. The Petitioner testified that he never received any of the notices because he was not residing at [REDACTED], [REDACTED]. The Petitioner and a witness testified that he was living at a home owned by his church but was unable to provide any additional evidence to corroborate the testimony. It was the Petitioner's obligation to update his address with the agency. The agency sent the notices to the last-known address of record. The agency has been recouping from the Petitioner since May, 2013. The Petitioner has been aware since at least that time of the overpayment yet did not file an appeal until January, 2014. Because the appeal was untimely, no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely as to the FS overpayment action and the tax intercept action.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of March, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 25, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit